

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: February 27, 2002  
TIME: 10:00 am  
PLACE: Tex Drive In & Restaurant  
Honokaa, Hawaii

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 10:10 a.m.

The following were in attendance:

**MEMBERS:** Mr. Gilbert S. Coloma-Agaran, Dr. Bruce Anderson, Ms. Meredith Ching, Mr. Clayton Dela Cruz, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

**STAFF:** Linnel Nishioka, Roy Hardy, Ed Sakoda

**COUNSEL:** Yvonne Izu

**OTHERS:** Manabu Tagomori, Paul Frandsen, Jamie Letterman, Mary Letterman, Pat Tummons, Chris Rathbun, Bob Tsuji, Marjorie Ziegler, Robert Lindsey, Bob Rosehill, Frank Turner, Steve Bowles, Bob Richardson, Donald Uchima, Leimana Damate, Ululani Sherlock, Walker Sanders

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

Chairperson Coloma-Agaran introduced Meredith Ching, who is the newest member of the Commission.

**1. Minutes of the January 30, 2002 meeting**

MOTION: (DELA CRUZ/NISHIDA)  
To approve the minutes.  
UNANIMOUSLY APPROVED.

**12. Mr. Donald Uchima, Excavation of Stream Bank, Kamae'e Stream, Hamakua, Hawaii, (TMK: 3-1-004:005)**

PRESENTATION OF SUBMITTAL: Ed Sakoda

RECOMMENDATIONS:

That the Commission:

- a. Find the applicant in violation of Hawaii Revised Statutes §174C-71 for grading a portion of the north bank of Kamae'e Stream, Hakalau, Hawaii, without a permit.
- b. Advise the applicant that future violations for stream channel alterations may be considered 'willful' violations which may be subject to fines of up to \$1000 per violation as provided in Hawaii Revised Statutes 174C-15.
- c. Approve an after-the-fact stream channel alteration permit for the grading and revegetation of the stream bank at Kamae'e Stream (TMK: 3-1-004:005), subject to the standard conditions for after-the-fact stream channel alteration permits in Exhibit 5, and the following condition:

“The applicant shall revegetate the altered portion of the stream channel within ninety (90) calendar days of the date of this Commission action. The revegetation shall be accomplished following the recommendations of the Maunakea Soil and Water Conservation District, and the applicant shall notify the Commission in writing when the revegetation is complete.”

**MOTION: (RICHARDS/NISHIDA)**

**To approve the submittal.**

**UNANIMOUSLY APPROVED.**

**2. Old Business/Announcements by Deputy Director Linnel Nishioka**

The appurtenant rights bill under the Water Code is moving through the legislature well. It should be coming out from the Senate and House soon in the same form. Deputy Director Nishioka is hopeful that the bill will pass. If it does, the Commission will then be able to have the ability to determine appurtenant rights.

**3. Designation of Commissioner Herbert M. Richards, Jr. as Vice Chairperson for the Commission on Water Resource Management**

PRESENTATION OF SUBMITTAL: Linnel T. Nishioka

Deputy Director Nishioka clarified the duties of the Vice Chairperson. She stated that the Vice Chair would chair the meeting in the absence of the Chair.

**MOTION: (ANDERSON/DELA CRUZ)  
To approve the submittal.  
UNANIMOUSLY APPROVED.**

**4. Department of Agriculture's Request for Extension of Time on the Commission on Water Resource Management's Restoration Order for the Diversion (SCAP-HA-116) on Hakalaoa Stream, Honokaa, Hawaii**

PRESENTATION OF SUBMITTAL: Ed Sakoda

RECOMMENDATIONS:

That the Commission:

1. Extend the December 31, 2001 deadline and issue an order to KS & DOA that the illegal diversion on Hakalaoa Stream above Hiilawe Falls (SCAP-HA-116) be removed no later than June 30, 2002.
2. Authorize the Chairperson to schedule a Commission meeting to accelerate deadlines identified with respect to recommendations 1 and/or require periodical interim presentations of the status of the falls fix at regularly scheduled Commission meetings.

TESTIMONY BY APPLICANT:

Mr. Brian Kau from the Department of Agriculture (DOA) thanked the Commission for their patience in this project. The project is finally underway and the contractors are progressing very well. The reason why DOA is requesting an extension is because the contractor has encountered some very difficult tunneling material. The rock is very dense and is taking longer than anticipated. The contractor's main concern is safety. The space in the tunnel is very confining. Additional manpower and funding would not help in this type of situation. The contractors are working 24 hours a day and 7 days a week. With all of this in mind, Mr. Kau asked the Commission for their consideration in granting the extension.

When asked by Commissioner Richards about levying fines on the DOA, Mr. Kau answered that a clause for liquidated damages are included in the contract. A certain amount of the contractor's fee may be used as an offset to any extension to the contract. There is a penalty clause in the contract.

In answer to Commissioner Anderson's question on the need to have DOA perform ongoing maintenance for the ditch, Mr. Kau responded that the Natural Resources Conservation Service (NRCS) is a cost-sharing partner with DOA. A contractor is currently doing weed killing, sediment removal and minor repairs. He stated that once the Capital Improvement Projects are implemented, the minor repairs will be kept to a minimum.

Mr. John Romanowski, Vice President of Jas Glover Contracting stated that the work site is 2 miles, 10,000 feet into the mountain. It is basically a 7 x 7-foot square rectangular opening. All of the materials go in and out of that opening. Currently, they are about halfway through the bypass portion of the project. They are almost directly behind the waterfall. The major task of the project is to excavate out a tunnel and line it. Mr. Romanowski made note of the photographs that a steel plate liner is going into the tunnel. When the bypass is completed, they would need to seal off both ends of the tunnel and remove all safety equipment. In addition, existing adits are being used as safety and stocking and turnaround stations. They need to be replaced. Currently the tunnel is completely wired with lights, telephones, and safety equipment. Part of the project is to remove these as well. The June 17 date on the schedule is the completion of the project. This date is when the diversion is removed, the waterfall is turned on, and all equipment is removed.

#### TESTIMONIES:

Mr. Walker Sanders, President of the Hamakua Ag Coop, stated that their members are impacted by this project. Their concerns are that they have been relying on the assumption that they will be receiving water starting in February to June. If this project is not completed by the June deadline, the farmers will suffer substantial losses. They are hoping that the water will be turned on. Mr. Sanders emphasized to the Commission that a lot of farmers are depending on this water being turned on again.

Mr. Christopher Rathbun of Waipio Valley who is a taro farmer thanked the Commission for their efforts in resolving all these issues. He did not understand the issue that was in the staff submittal on page 3 where it states that DOA will secure property rights to all sections of Hamakua Ditch. He did not understand why State and Federal agencies are spending millions of dollars repairing the tunnel when security rights have not been secured first.

Mr. Bob Shioji, Hamakua Farm Bureau, stated that he is in support of the DOA's request for extension to June 30, 2002. He would like to see the tunneling completed by this date. Mr. Shioji also agrees with the Commission that fines should be assessed if the project is not completed by June 30. On the other hand he stated that if the contractors are rushed with this project, the quality of work may go down.

Ms. Marjorie Ziegler of Earthjustice stated a concern about the Lalakea system feeding into the Hamakua Ditch while the waterfall repair is ongoing. She was concerned about the amount of water that is feeding into the ditch and who is receiving the water. Another concern of Ms. Ziegler is the Waima Stream which is currently not being pumped or diverted by the Lower Hamakua Ditch system. She stated that there are no plans to use Waima Stream to feed the Lower Hamakua Ditch system. She then asked Kamehameha Schools (KS) and the Commission to consider abandoning Waima Stream.

Mr. Robert Lindsey, Hawaii Island Director of Kamehameha Schools, stated that he has no objection if the Commission took up the issue of abandoning Waima Stream.

Chairperson Coloma-Agaran noted that the Sunshine Law requires that the abandonment of Waima intake needs to be on the agenda before the Commission can take any action and it currently is not on the agenda.

**MOTION: (RICHARDS/ANDERSON)**

**To approve the submittal.**

**UNANIMOUSLY APPROVED.**

**5. Complaint C98-08 and Earthjustice Legal Defense Fund Petition for Declaratory Order on Lalakea Stream, Honokaa, Hawaii (TMK: 4-8-03:06)**

PRESENTATION OF SUBMITTAL: Ed Sakoda

AMENDED RECOMMENDATIONS:

~~That the Commission take action on this submittal by approving one of the options detailed in part I and one of the options detailed in part II or an alternative option.~~

Abandonment of Lalakea Ditch

1. Kamehameha Schools (KS) is required to submit an application for abandonment within 30 days from the Commission meeting on February 27, 2002.
2. KS is required to delay abandonment until such time that the bypass tunnel has been completed so the users will have sufficient water to use.

Assessment of the Fine

1. Assess the maximum fine of \$453,000 and order an alternative settlement. The Commission's Penalty Policy allows a project to substitute for or be credited against a cash penalty. Failure to successfully meet the alternative would result in re-institution of the fine.
2. In 60 days, KS can return to the Commission with an alternative mitigation project of comparable value. This would include such projects as study of stream ecology which may help document the improvements in stream quality and ecology as a result of the restoration of the streams or other projects that will be over and above what the applicant will need to otherwise abandon the system. These projects should be a public benefit and in the interim KS is to discuss with staff such projects.

## TESTIMONY BY APPLICANT:

Mr. Manabu Tagomori, Water Resource Manager of Kamehameha Schools (KS), stated that KS will abandon its use of the Lalakea Ditch diversions and file an application with the Commission for abandonment.

With regard to the fines, Mr. Tagomori admitted that KS failed to file for extensions. Given the chronology of events, Mr. Tagomori stated that KS has been diligently addressing the issues that the Commission has imposed on KS.

In answer to Commissioner Meredith Ching's question on what will happen to the users once KS abandons the ditch, Mr. Tagomori stated that KS would relocate Mr. Balberde's aquaculture activities to other KS property below the Lower Hamakua Ditch. The issues with the Department of Water Supply will need to be resolved. KS will address their concerns. Mr. Mastronardo currently takes water from a stream. KS is working on solution where he would be able to use a pipeline that is coming down from the Lalakea Reservoir.

In answer to Commissioner Anderson's question on how will KS perform the maintenance of the reservoir, remove the pipeline so that it would not become a nuisance to the community, Mr. Tagomori stated that by abandoning the system, KS would close down the intakes on the 3 intake structures. The ditch and reservoir would need to be breached so that it would not create a hazard. KS will need to study the aspect of removing the pipeline. Because it is old, there would be maintenance that is required as well as replaced. Because of all the cost factors involved, it was in the best interest of KS to abandon the system.

Mr. Tagomori stated that in view of the DOA's work on the tunnel, KS will support them and will continue to work with them in completing the project.

Commissioner Nishida made referral to a February 12, 2002 letter to the Commission from KS stating that they had no intention of abandoning the Lalakea Reservoir system. Commissioner Nishida asked Mr. Tagomori to clarify why such a major decision in changing direction came about in less than 15 days. In clarifying matters, Mr. Tagomori stated that the underlying reasons why KS is abandoning the system is because it is felt that KS would not be able to generate enough income to offset the cost of repairs and maintenance of the system.

Mr. Tagomori stated that KS will be relocating Mr. Balberdi's operations to an area which will not require any capital intensive work in providing him water. KS is committed to work with him.

Ms. Marjorie Ziegler of Earthjustice who is representing Waipio Valley Community Association, stated that KS is making the right decision of abandoning the Lalakea system. When this happens, Ms. Ziegler claims that full restoration of streams under the State Water

Code will occur. Ms. Ziegler asked that a few corrections be made for the record: 1) chronology in latest submittal to include the date of Mr. Chris Rathbun initially filed his complaint on the wasting of water for the Lalakea Ditch, 2) no meeting has been held with KS and the Division of Aquatic Resources (DAR) regarding the species; and 3) EJ understands that the County Department of Water Supply is not using Lalakea Ditch as an emergency source and this is something she wants the Commission to check into.

Mr. Bob Rosehill of KS clarified Ms. Ziegler's statement about KS meetings with DAR. He emphasized his frustrations that one must contact different state agencies, be knowledgeable about the relationships between agencies, who has the responsibility of analyzing the project and protocol has to be followed. KS has attempted meetings with DAR but had to go through various state agencies first.

Chairperson Coloma-Agaran asked for a motion to enter into executive session to consult with counsel on Item 5 of the agenda.

**MOTION: (RICHARDS/ANDERSON)**

At 11:55 am the Commission went into Executive Session.

The meeting was resumed at 12:12 pm.

Commissioner Anderson made a motion to accept KS proposal to abandon the system but in doing so the applicant is required to submit an application for abandonment within 30 days from this Commission meeting. KS is required to delay abandonment until such time that the bypass tunnel has been completed so the users will have sufficient water to use. The Commission accepts the recommendations as it relates to the fine, however, in 60 days, KS can return to the Commission with an alternative mitigation project of comparable value. This would include such projects as study of stream ecology which may help document the improvements in stream quality and ecology as a result of the restoration of the streams or other projects that will be over and above what the applicant will need to otherwise abandon the system. These projects should be a public benefit and in the interim KS is to discuss with staff such projects.

**MOTION: (ANDERSON/RICHARDS)**

**To approve the submittal as amended.**

**UNANIMOUSLY APPROVED AS AMENDED.**

6. **Waiahole-Waikane Community Association, Hakipu'u Ohana, Ka Lahui Hawaii, Kahalu'u Neighborhood Board No. 29, and Makawai Stream Restoration Alliance, PETITION FOR DECLARATORY ORDER DENYING BISHOP ESTATE'S WATER USE PERMIT APPLICATION FOR FAILING TO COMPLY WITH THE COMMISSION ON WATER RESOURCE MANAGEMENT'S FINAL DECISION AND ORDER IN THE WAIAHOLE DITCH COMBINED CONTESTED CASE HEARING (DEC-OA00-G6)**

**Kamehameha Schools APPLICATION FOR A WATER USE PERMIT, Waiawa Development Tunnel (Well No. 2657-05), TMK 9-6-05:003, Existing/New (Irrigation and Dust Control) Use for 4.2 mgd, Koolaupoko, Kahana, and Waipahu-Waiawa Ground Water Management Areas, Oahu**

Commissioner Nishida recused himself from Item 6.

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATIONS:

The staff recommends that the Commission defer action to the April meeting on Oahu, tentatively scheduled for April 17, 2002, for the convenience of the applicant, petitioner, and any other interested parties that may wish to attend and provide testimony.

TESTIMONY BY APPLICANT:

Mr. Manabu Tagomori of KS gave a brief history of events that took place that lead to KS applying for a water use permit.

**MOTION: (ANDERSON/DELA CRUZ)**

**To approve deferral of submittal to April 17, 2002.**

**UNANIMOUSLY APPROVED TO DEFER.**

7. **Mary Letterman / Turner Drilling, APPLICATION FOR AFTER-THE-FACT WELL CONSTRUCTION PERMIT, Letterman Well (Well No. 5711-01), Well Construction: 6-inch Casing Diameter, 300-ft Deep Well, TMK 3-4-3: 56, 34-1236 Mamalahoa Highway, Hawaii**

PRESENTATION OF SUBMITTAL: Roy Hardy

AMENDED RECOMMENDATIONS:

That the Commission:



- A. Find Mary Letterman and Turner Drilling in violation of HAR §13-168-12(a).
- B. Impose a fine of \$250 on the applicant, and \$26,800 on the driller as summarized in Exhibit 4 of which payment will consist of foregoing \$10,800 owed by the applicant and a cash fine of \$16,000 payable within 30 days.
- C. That the Commission approve the issuance of ~~an after the fact~~ a well construction permit for the Letterman Well (Well No. 5711-04 2), subject to the standard conditions in Exhibit 5, and the following special conditions:
  - 1. The well should not be used for drinking water unless it is properly tested and treated.
  - 2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
  - 3. Once the applicant pays the \$250 fine, the application for a well construction permit for a new well will be approved.
- D. Suspend any current, pending or future applications by Turner Drilling until the fines are paid and Turner Drilling completes the permit process for this well.
- E. The driller is responsible for abandoning and sealing the well and the cost for same. Order Turner Drilling to handle the details of abandoning and sealing Well No. 5711-01.

## TESTIMONY BY APPLICANT:

Mr. Jamie Letterman gave a detailed account of the well drilling that was done on his property. A miscommunication between the driller, Frank Turner and Mr. Letterman occurred. They both thought the other obtained the well drilling permit.

Mrs. Mary Letterman stated that the fine is unfair because she is not at fault and the delay has caused a loss in her business.

## TESTIMONIES:

Mr. Frank Turner admitted that he did not have a well drilling permit when he drilled this well. The reason why he did not have the paper work is he assumed that Mr. Letterman already obtained the permit. Mr. Turner apologized to the Commission for the oversight. After Mr. Turner then gave chronology of the events that took place, he stated that this well

should be abandoned. Since the Letterman's now have a well permit, it should be sealed and Mr. Turner would forego the \$10,800 for the cost of drilling the well. He would pay for the abandonment and sealing and the Letterman's could hire another driller for the new well. He also stated that Mr. Letterman was present when they were setting up the rig and actually helped fill a hole created by the set-up.

Mr. Turner asked the Commission to consider extending the fine to be payable in 60 days instead of 30 days so he could finish current jobs to come up with money to pay the fine.

Mr. Steve Bowles of Waimea Water Services, Inc. stated that Mr. Turner is contracted to drill wells for a client of Mr. Bowles. For one client, it would be a significant disruption if Mr. Turner cannot continue this project if his current projects are suspended until fines are paid. Mr. Bowles later informed the Commission that both projects already had permits.

Chair Coloma-Agaran asked for a motion to enter into executive session to confer with counsel on this item.

**MOTION: (RICHARDS/NISHIDA)**

At 1:35 pm the Commission went into Executive Session to confer with counsel on Item 7.

The meeting was resumed at 1:45 pm.

Chair Coloma-Agaran asked for a motion for discussion purposes to adopt staff's recommendation.

**MOTION: (RICHARDS/NISHIDA)**

Commissioner Anderson's concern was that the well was done in an unsupervised manner without any permit and further was not constructed to specifications, even in the application. He felt that it would be appropriate in this case to require that the well be abandoned and sealed and that would be without prejudice as it relates to future applications for new wells. If a new well were drilled then it would be done presumably according to specified permit conditions.

Commissioner Nishida had similar concerns about the protection of the resource standpoint on the quality of the well. Water was hit and with casing it would provide a conduit. He has concerns about maintaining that hole down in the ground. Commissioner Nishida stated that he feels abandonment is the safest route at this point.

Commissioner Richards agreed on the abandonment of this well and the applicant should be fined the 1-day fine.

Commissioner Anderson stated that the applicant should be responsible for what happens on their property. He gave an example that if a building contractor came on your land and built something illegal, you the property owner are responsible. This well was constructed without a permit, with questionable integrity and this is an issue that is central to whatever penalties that may come up. Commissioner Anderson stated that it would be appropriate to consider in the future as to whether or not wells like this should be routinely plugged and abandoned if they are constructed without a permit. In this case it is something the Commission should consider and it relates to whatever penalties might be imposed as it relates to either party. Both parties he felt are somewhat at fault as it relates to the situation at hand.

Commissioner Anderson opened discussion on the fine to the driller. He felt that the driller is at fault to an extent. He did not have any specific recommendation on the fine but he felt that it be appropriate that a fine be levied such that it would provide financial disincentive for violations as this. In his opinion, he stated that the fine should be less than \$26,000.

Commissioner Richards stated that the fine is too high. He stated that since the driller has not been paid for the well drilling that the fine be set to \$10,800 which is the cost for drilling the well. The owner would not have to pay the driller anything more. Mr. Turner could continue to work and not having to pay anything more. The extension that he requested for is denied. Commissioner Richards also agreed on abandonment and sealing the well.

Commissioner Nishida reminded the Commission that this is not a first violation for Turner Drilling. He feels that there should not be an economic gain on the part of the driller for making such as mistake. Commissioner Nishida recommended that the fine be held at \$26,800 and reduce that by the \$10,800 that the driller would not be charging the applicant, and make the driller responsible for abandoning and sealing the well. The total fine for Mr. Turner in Commissioner Nishida's recommendation is \$16,000.

Commissioner Richards made a motion to amend staff's recommendation B to read:

- B. Impose a fine of \$250 on the applicant and ~~\$26,800~~ \$10,800 on the driller as summarized in Exhibit 4 payable within 30 days. The driller will pay the \$10,800 by foregoing his fee from the applicant and the driller is responsible for abandoning and sealing the well.

**MOTION: (RICHARDS/ANDERSON)**  
**To approve the submittal as amended.**

Commissioner Nishida believed that by having Mr. Turner abandon the well would replicate what the Commission had imposed on the initial violation. He would like to see some recognition of the fact that this is a repeat situation.

Commissioner Anderson suggested that the issues on abandonment and the fine for the driller and applicant all be voted on separately.

**MOTION: (ANDERSON/NISHIDA)**

**Turner Drilling abandons and seals the Letterman Well (Well No. 5711-01)**

**UNANIMOUSLY APPROVED THE ABANDONMENT AMENDMENT. (See amended recommendation E.)**

Chair Coloma-Agaran stated that there are 2 main disincentives for violations for drillers: 1) they cannot process any further permits until they pay a fine, and 2) as a repeat offender, the penalties increase. He made note of the consistency and what is being served.

Commissioner Nishida stated that in consideration of Commissioner Richards' highlighting the fact that the \$10,800 is the penalty, he accepted the rationale where the driller would not be paid that amount which constitutes the fine.

Commissioner Anderson stated that he understood Commissioner Nishida's rationale where the basic fine of \$26,800 be used and that Mr. Turner will not be paid the \$10,800 from the applicant, thereby reducing the fine to \$16,000.

Commissioner Dela Cruz stated that he felt the driller has made a mistake and he has admitted that he has not complied with the permit process. He knew he drilled a well without a permit and he feels that he should be assessed some fine for his second offense. Commissioner Dela Cruz did not believe that the \$26,800 that staff recommended is high. He stated that \$16,800 be the fine and assessed the driller. By examining the documents, Commissioner Dela Cruz stated that the driller, being in that business, has to know that a permit is needed for drilling. Mr. Turner has admitted his mistake and should be assessed the fine of \$16,800.

Commissioner Nishida amended Commissioner Richards' motion to read:

- B. Impose a fine of \$250 on the applicant and \$26,800 ~~\$10,800~~ on the driller of which payment will consist of foregoing \$10,800 owed by the applicant and a cash fine of \$16,000 payable within 30 days.

**MOTION: (NISHIDA/ANDERSON)**

**APPROVED AS AMENDED WITH 1 OPPOSITION (RICHARDS).**

Chair Coloma-Agaran opened for discussion the fine on the applicant. There was no discussion.

**MOTION: (NISHIDA/RICHARDS)**

**UNANIMOUSLY APPROVED TO IMPOSE THE APPLICANT WITH A FINE OF \$250**

Chair Coloma-Agaran stated that once the applicant pays the \$250 fine, the application for a well construction permit for a new well will be approved.

**MOTION: (RICHARDS/NISHIDA)  
UNANIMOUSLY APPROVED AS AMENDED.**

8. **Hawaiian Marine Enterprises, APPLICATION FOR A WATER USE PERMIT, HME-1 Well (Well No. 4157-12), TMK 5-6-002: 009, Future (Aquaculture) Use for 0.300 mgd, Koolauloa Ground Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATIONS:

Staff recommends that the Commission defer this application until the March 20, 2002 Commission meeting.

**MOTION: (CHING/NISHIDA)  
To approve the submittal to be deferred to March 20, 2002.  
UNANIMOUSLY APPROVED TO DEFER**

9. **Douter Coffee Company APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT, Douter Well (Well No. 3957-04), Pump Installation: 300 gpm for Agricultural use, TMK 7-5-11: 23 & 24, 75-5476 Mamalahoa Highway, Hawaii**

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATIONS:

That the Commission:

- A. Find the applicant and the driller in violation of HAR §13-168-12(a).
- B. Impose a fine of \$125 on Douter Coffee Company, and \$500 on Wai'eli Drilling as summarized in Exhibit 2 payable within 30 days.
- C. That the Commission approve the issuance of a pump installation permit for Douter Well (Well No. 3957-04), subject to the standard conditions in Exhibit 4, and the following special conditions:

1. The well should not be used for drinking water unless it is properly tested and treated.
  2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
- D. Suspend any current, pending or future applications by both the applicant and the driller until the fines are paid and the applicant/driller completes the permit process for this well.

TESTIMONY BY APPLICANT:

Mr. Bob Richardson who is representing Wai'eli Drilling stated that the time line for the owner was very short. The project started in 1997. There were endless problems that came about from that time. The owners were very desperate to complete this project. Mr. Richardson was asked to install the pump and run the pump test. He did this with the understanding that the Douter Company would not utilize the pump until the permit was approved. Mr. Richardson stated that they had no intention for that company to use that pump until the approval was final.

TESTIMONIES:

Pat Tummons of Environment Hawaii felt that if Wai'eli Drilling is a repeat violator, they should be fined a significant penalty as like the previous violators.

Mr. Steve Bowles stated and clarified that permanent pumping equipment is used to perform the pump test. This is a critical point to look at.

**MOTION: (NISHIDA/DELA CRUZ)**

**To approve the submittal.**

**UNANIMOUSLY APPROVED.**

- 10. Robert Rice / Wai'eli Drilling, APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT, Opihihale Well (Well No. 1652-01), Pump Installation: 65 gpm for Irrigation use, TMK 8-7-014: 006, Opihihale, South Kona, Hawaii**

PRESENTATION OF SUBMITTAL: Roy Hardy

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find the applicant and the driller in violation of HAR §13-168-12(a).
- B. Impose a fine of ~~\$125~~ \$250 on the Robert Rice, and ~~\$500~~ \$625 on Wai'eli Drilling as summarized in Exhibit 2, payable within 30 days.
- C. That the Commission approve the issuance of a pump installation permit for Opihihale Well (Well No. 1652-01), subject to the standard conditions in Exhibit 4, and the following special conditions:
  - 1. The applicant shall conduct long term and step drawdown tests, in accordance with the Hawaii Well Construction and Pump Installation Standards, and submit the results on the forms provided in Exhibit 6. within 60 days of the date of this meeting.
  - 2. The well should not be used for drinking water unless it is properly tested and treated.
  - 3. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
- D. Suspend any current, pending or future applications by both the applicant and the driller until the fines are paid and the applicant/driller completes the permit process for this well.

TESTIMONY BY APPLICANT:

Mr. Bob Richardson felt that they submitted all paperwork in a timely manner and that Mr. Rice had failed to do his part. Mr. Richardson gave a chronology of the process that he went through to obtain the permit.

Commissioner Nishida moved to accept staff's recommendation but eliminating the mitigative component in both regards.

**MOTION: (NISHIDA/DELA CRUZ)**

**To approve the submittal as amended.**

**UNANIMOUSLY APPROVED AS AMENDED.**

For discussion purposes, Chair Coloma-Agaran asked Commissioner Nishida his thoughts about removing the mitigative component.

Commissioner Nishida based his rationale on the applicant failing to do his part and the driller being that this was much more than just a technicality; they are responsible for all follow-ups.

**11. Hokukano Ranch, Inc. / Paul Frandsen, APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT, Hokukano Well (Well No. 3153-01), Pump Installation: 400 gpm for Domestic and Irrigation use, TMK 7-9-001: 001, Hokukano Ranch, Kealahou, Hawaii**

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATIONS:

That the Commission:

- A. Find Hokukano Ranch and Paul Frandsen in violation of HAR §13-168-12(a).
- B. Impose a fine of \$125 on Hokukano Ranch, and \$125 on Paul Frandsen as summarized in Exhibit 2 payable within 30 days.
- C. That the Commission approve the issuance of an After-the-Fact pump installation permit for Hokukano Well (Well No. 3153-01), subject to the standard conditions in Exhibit 4, and the following special conditions:
  - 1. The well should not be used for drinking water unless it is properly tested and treated.
  - 2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
- D. Suspend any current, pending or future applications by both the applicant and the driller until the fines are paid and the applicant/driller completes the permit process for this well.



TESTIMONY BY APPLICANT:

Mr. Paul Frandsen was present to answer questions.

**MOTION: (DELA CRUZ/CHING)**

**To approve the submittal.**

**UNANIMOUSLY APPROVED.**

Respectfully submitted,

FAITH F. CHING

Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA

Deputy Director